



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2013-0080; Notice 2]

Combi USA, Inc., Denial of Petition for  
Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration, DOT

**ACTION:** Notice of Petition Denial

**SUMMARY:** Combi USA, Inc., (Combi)<sup>1</sup>, has determined that certain model child restraint systems manufactured between 2007 and 2012 do not fully comply with paragraph 5.4.1.2(a) of Federal Motor Vehicle Safety Standard (FMVSS) No. 213, *Child Restraint Systems*. (49 CFR 571.213). Combi has filed an appropriate report dated June 9, 2013, pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports*.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR Part 556, Combi has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. The National Highway Traffic Safety Administration (NHTSA) published a notice of receipt of the petition, with a 30-day public comment period, on August 9, 2013, in the Federal Register (78

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<sup>1</sup> Combi is a U.S. company that manufactures child restraint systems.

FR 48767). No comments were received in response to Combi's petition.

To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at: <http://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2013-0080."

**CONTACT INFORMATION:** For further information on this decision contact Mr. Tony Lazzaro, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202)366-5304, facsimile (202) 366-7002.

**RELEVANT REQUIREMENTS OF FMVSS NO. 213:** FMVSS No. 213 paragraph S5.4.1.2(a) requires, in pertinent part, that "the webbing of belts provided with a child restraint system and used to attach the system to the vehicle or to restrain the child within the system shall- (a) Have a minimum breaking strength for new webbing of...not less than 11,000 N in the case of the webbing used to secure a child to a child restraint system when tested in accordance with S5.1 of FMVSS No. 209."

The term "new webbing", is "webbing that has not been exposed to abrasion, light, or micro-organisms." (49 CFR § 571.213, S5.4.1.2(a)).

**Child Restraints Involved:** Affected are 23,357 Combi Coccoro 2009-2012 model child restraint systems (model #8820), 5,391 Combi Zeus 360 2009-2012 model child restraint systems (model

#8836), and 4,391 Combi Zeus Turn 2007-2009 model child restraint systems (model #8815).

**Noncompliance:** Combi acknowledges that the affected child restraint systems do not meet the minimum breaking strength requirements of FMVSS No. 213 paragraph 5.4.1.2(a). Combi submitted a preliminary Noncompliance Information Report on June 9, 2013. Combi submitted a supplemental Noncompliance Information Report on July 1, 2013.

**SUMMARY OF COMBI'S ANALYSIS AND ARGUMENTS:**

Combi described the noncompliance as follows:

Combi USA, Inc. has identified a noncompliance with certain Model #8220 Coccooro Convertible child restraints when the webbing assembly within the restraint is subjected to the minimum breaking strength requirements as specified in FMVSS No. 213 section 5.4.1.2 (a).

Combi filed the same statement describing the noncompliance for the Zeus Turn and Zeus 360 models of child restraint systems. In support of its petition, Combi states that as part of NHTSA's 2012 safety compliance testing of the subject Coccooro child restraint system harness webbing, the breaking strength yielded results of 8,990 N, 9,170 N, and 9,300 N. As noted earlier, paragraph 5.4.1.2(a) of FMVSS No. 213 requires a

minimum breaking strength of 11,000 N for webbing used to restrain a child within a child restraint system. Combi also noted that all of the subject Coccooro child restraint systems were produced with the identical harness system as tested by NHTSA in 2012.

Combi further noted that all of the subject Zeus 360 and Zeus Turn child restraint systems were produced with the same embedded stop button within the harness system as the Coccooro child restraints which were tested by NHTSA in 2012.

Combi stated in its petition that the production of the Zeus Turn child restraint system ended on March 25, 2009, and that the production of the Zeus 360 child restraint system ended on May 24, 2012. Combi also explained that it has implemented an engineering modification which removes the embedded stop button to all of the Coccooro child restraints produced since January 29, 2013.

In support of its petition, Combi stated that it has not received notice of any partial or complete breakage or tearing of the harness system in the Coccooro and Zeus child restraints. In further support of its petition, Combi provided data based on its own dynamic testing of the Coccooro and Zeus 360 child restraint systems. According to Combi, its testing attempted to determine the crash force loading on the harness system of the Coccooro and Zeus 360 child restraints when subjected to the

FMVSS No. 213 dynamic crash pulse (30 mph crash pulse) and the NCAP pulse (35 mph crash pulse). Combi's own test results showed load cell values ranging from approximately 1,150 N to 1,900 N. Combi stated that these testing results confirm that the harness assemblies of the subject Cocco, Zeus 360, and Zeus Turn child restraints will not fail in a real world crash under any circumstances, as the forces acting on the harness system in dynamic testing are less than 22 percent of the breaking strength test results determined by NHTSA. Combi therefore asserts that the harness assemblies of the subject Cocco and Zeus child restraints present no safety risk.

Finally, Combi asserts that given the relatively small number of subject Cocco, Zeus 360, and Zeus Turn child restraints, the effectiveness of any notification campaign regarding this technical noncompliance will be limited. Combi further states that any noncompliance notice campaign may result in customers deciding to discontinue using their Cocco and Zeus child restraints for a period of time, adding a risk of injury where none exists as a result of the noncompliance of the harness webbing of the subject Cocco and Zeus child restraints with the minimum breaking strength requirements of FMVSS No. 213 S5.4.1.2(a).

In summary, Combi contends that the noncompliance is inconsequential to motor vehicle safety, and that its petition

to exempt it from providing notification of noncompliance as required by 49 U.S.C. 30118 and remedying the noncompliance as required by 49 U.S.C. 30120, should be granted.

**COMMENTS:** NHTSA published a notice of the petition in the Federal Register to allow an opportunity for members of the public to present information, views, and arguments on the subject petition. As noted earlier, no comments were received. The Agency notes that an absence of opposing argument and data does not require the Agency to grant the petition.<sup>2</sup>

**NHTSA'S CONSIDERATION OF COMBI'S INCONSEQUENTIALITY PETITION:**

*General Principles:* Federal Motor Vehicle Safety Standards are adopted only after the Agency has determined, following notice and comment, that the standards are objective and practicable and "meet the need for motor vehicle safety." See 49 U.S.C. 30111(a). Thus, there is a general presumption that the failure of a motor vehicle or item of motor vehicle equipment to comply with a FMVSS increases the risk to motor vehicle safety beyond the level deemed appropriate by NHTSA through the rulemaking process. To protect the public from such risks, manufacturers whose products fail to comply with a FMVSS are normally required

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<sup>2</sup> See *Dorel Juvenile Group; Denial of Appeal of Decision on Inconsequential Noncompliance*, 75 FR 507, 510 (Jan. 5, 2010).

to conduct a safety recall under which they must notify owners, purchasers, and dealers of the noncompliance and provide a remedy without charge. 49 U.S.C. 30118-30120.

However, Congress has recognized that, under some limited circumstances, a noncompliance could be "inconsequential" to motor vehicle safety. "Inconsequential" is not defined either in the statute or in NHTSA's regulations. Rather, the Agency determines whether a particular noncompliance is inconsequential to motor vehicle safety based on the specific facts before it. The relevant issue in determining inconsequentiality is whether the noncompliance in question is likely to significantly increase the safety risk to individuals involved in accidents or to individual occupants who experience the type of injurious event against which the standard was designed to protect. See *General Motors Corp.; Ruling on Petition for Determination of Inconsequential Noncompliance*, 69 FR 19897 (Apr. 14, 2004).

In order to demonstrate inconsequentiality, the petitioner must demonstrate that the noncompliance "does not create a significant safety risk." See *Dorel Juvenile Group*; 75 FR at 510, quoting *Cosco, Inc., denial of Application for Decision of Inconsequential Noncompliance*, 64 FR 29408, 29409 (June 1, 1999). There have been instances in the past where NHTSA has determined that a manufacturer has met its burden of demonstrating that a noncompliance is inconsequential to safety.

These include a noncompliance concerning labeling where the discrepancy with the safety standard was determined not to lead to any misunderstanding, especially where sources of the correct information were available (e.g. in the vehicle owner's manual). *See General Motors Corp.*, 69 FR at 19899.

The burden of establishing the inconsequentiality of a failure to comply with a performance requirement in a safety standard is more substantial and difficult to meet, and the Agency has not found many noncompliances related to a safety standard to be inconsequential. *See Id.*

***Combi's Argument and NHTSA's Response:*** In support of its petition, Combi makes several different arguments. First, Combi argues that the company has not received notice of any partial or complete breakage or tearing of the harness system in any Cocco and Zeus child restraints. The Agency, however, does not consider the absence of complaints to show that the noncompliances are inconsequential to safety. The absence of a complaint does not mean there have not been any problems or failures, and it does not mean that there will not be failures in the future. *See Dorel Juvenile Group, Denial of Petition for Decision of Inconsequential Noncompliance*, 78 FR 53189, 53190 (August 28, 2013).



Second, Combi argues that, based on measured forces acting on the harness system when subjected to FMVSS No. 213 and NCAP crash pulse dynamic testing, the subject child restraints present no motor vehicle safety risk since the measured forces acting on the harness system are less than 22 percent of the breaking strength results determined by NHTSA. The Agency is not persuaded by this argument. NHTSA does not simply have one performance test, a dynamic test. NHTSA has multiple performance tests because a single test does not address the range of safety concerns with child restraints. The webbing breaking strength test and the child restraint system dynamic test do not test for the same conditions and serve distinct purposes. The webbing breaking strength test conditions are necessarily more severe than those for dynamic testing to help ensure that the webbing will afford effective protection for severe crashes, even after the webbing degrades due to abrasion in use and exposure to sunlight. In addressing past similar arguments raised by child restraint system manufacturers who submitted webbing load force data generated in dynamic testing to demonstrate apparent safety margins in comparison to webbing breaking strength test results, the Agency stated that "[a] 30 mile per hour test is not indicative of the upper limit of safety. The test conditions in FMVSS No. 213 reflect the concern that child restraints will withstand even the most severe

crashes. These are well above 30 mph." *Dorel Juvenile Group [Cosco] (DJG); Denial of Applications for Determination of Inconsequential Noncompliance*, 73 FR 41397, 41399 (July 19, 2008). While Combi also conducted dynamic testing using the higher NCAP crash pulse, this provides an increase of only 5 mph over the FMVSS No. 213 dynamic crash pulse. In adopting the webbing strength standard, NHTSA has never said and NHTSA does not believe that it is enough that webbing withstands a 35 mph crash. There are real-world severe crashes which take place above this level. In those crashes, the force on the webbing is higher than in a 30 or 35 mph based crash. And, it must be recognized that webbing in child restraints that have been used may be degraded. In such crashes, a child occupant restrained in a child seat with webbing, when new, that merely met a strength test related to a 35 mph crash would be at an increased risk of injury compared with a child restrained in a child seat with webbing that meets the webbing strength test in FMVSS No. 213 S5.4.1.2(a).

Next, Combi asserts that given the relative small number of subject child restraint systems affected, the effectiveness of any notification campaign will be limited. This type of argument is immaterial to the inconsequentiality analysis because "the number or percentage of vehicles or equipment affected by the noncompliance is not relevant to the issue of

consequentiality". See *General Motors Corp.*, 69 FR 19899; *Cosco, Inc.*, Denial of Application for Decision of Inconsequential Noncompliance, 64 FR 29408,029409 (June 1, 1999). In addition, the Agency would not necessarily consider an affected population of over 33,000 to be considered a small number when evaluating safety risk.

Finally, Combi argues that any noncompliance notice campaign may result in customers deciding to discontinue using their subject restraint(s) for a period of time thereby adding risk of injury. This argument was not supported with any evidence and the Agency is not persuaded by this argument. The Agency's Recall Management Office will review Combi's noncompliance notification campaign to assure that it is effective and the notification makes it clear to the affected customer(s) that it is better to continue to use the subject child restraint(s) while awaiting the remedy provided by the manufacturer, and that it is unsafe, and in almost all cases unlawful, to transport a child passenger in a motor vehicle without the use of a proper restraint.

**Decision:** After carefully considering the arguments presented in this matter, NHTSA has decided that the petitioner has not met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Combi's

petition is hereby denied, and the petitioner must notify owners, purchasers and dealers pursuant to 49 U.S.C. 30118 and provide a remedy in accordance with 49 U.S.C. 30120.

**Authority:** (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

**Dated:** November 21, 2013.

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Nancy Lummen Lewis  
Associate Administrator  
for Enforcement

**Billing Code:**